

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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RANDOLPH W. KEUCH	:	
Plaintiff,	:	CIVIL ACTION
v.	:	
TEVA PHARMACEUTICALS USA, INC.,	:	CASE NO. 2:19-CV-05488 (JMG)
And TEVA PHARMACEUTICAL	:	
INDUSTRIES, Ltd.,	:	
Defendants.	:	

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**PRETRIAL MEMORANDUM OF PLAINTIFF RANDOLPH KEUCH**

In accordance with the Court's Order of September 21, 2022 and Local Rule 16 (c), Plaintiff Randolph W. Keuch submits the following Pretrial Order.

**NATURE OF THE ACTION AND BASIS OF JURISDICTION**

This is an age discrimination action pursuant to the applicable provisions of the Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. § 621, *et seq.* and the Pennsylvania Human Relations Act ("PHRA"), **43 P.S. §§ 951** *et seq.* Plaintiff filed this action against Teva Pharmaceuticals USA, Inc. (hereinafter "TUSA") and Teva Pharmaceuticals Industries, Ltd. (hereinafter "TPI") (collectively "Defendants" or "Teva") based upon Defendants' failure to properly evaluate Plaintiff's performance for retention during a broad reduction of force of employees of Teva while retaining a substantially younger but less credentialed and qualified individual who was one of Plaintiff's direct reports before Plaintiff was terminated from his employment with Teva to take over his job responsibilities. Jurisdiction is based upon the ADEA, the federal legislation cited above with supplemental jurisdiction of Plaintiff's state-based claims under the PHRA.

### **SUMMARY STATEMENT OF RELEVANT FACTS**

Plaintiff Keuch was born on May 27, 1954, and is currently 68 years of age. He was last employed by Teva as Senior Director of Total Rewards (compensation and benefits) for the Americas. Plaintiff is an accomplished professional and nationally recognized leader in compensation and benefits. His education, degrees, industry-wide credentials and extensive employment history demonstrate his impressive qualifications and acumen in his chosen profession. While employed by Teva, Plaintiff led the Total Rewards Center for the Americas, providing subject matter expertise for and innovative solutions to all facets of total rewards issues which led to a multitude of notable results for Teva.

Defendant, TPI is an Israeli, publicly held (NYSE), multinational pharmaceutical company headquartered in Petah Tikva, Israel. While it specializes primarily in generic medicine, its other business interests include active pharmaceutical ingredients and proprietary pharmaceuticals. It is the largest generic drug manufacturer in the world and one of the fifteen (15) largest pharmaceutical companies worldwide. Teva's total revenue in 2018 was nearly nineteen billion dollars (\$18,854,000,000). Collectively with its wholly owned subsidiary, Teva employed before its reduction in force nearly 60,000 people around the world. The Defendant Teva entities were Plaintiffs joint employers and the actions that are the basis of liability were jointly affected by both.

In a series of events involving loans to make purchases of other companies, regulatory demands causing Teva to sell its most profitable and low-competition products, greater regulatory fast-tracking of generics for Teva's competitors, the companies standing in the investment community was challenged greater regulatory fast-tracking of generics for Teva's competitors, and approval of generic versions of Teva's two-decade-long main revenue

producing, brand name multiple sclerosis drug, Copaxone, all led to lowered credit ratings, negative views from investors and its stock spiraling down to a fifteen year low. Additionally, in early 2017, TPI was forced to pay fines to the United States Department of Justice ("DOJ") and the Securities and Exchange Commission ("SEC") totaling in excess of \$520 million to resolve federal violations of the Foreign Corrupt Practices Act ("FCPA") arising from bribery charges relating to its operations in Russia, Ukraine. And Mexico. Teva's settlement was the largest fine ever paid by a pharmaceutical company over FPCA violations.

These circumstances led to the hiring of Kare Schultz as the President and CEO of TPI in November 2017 who was faced with creating an immediate strategy to bolster investor confidence and thereby raise the price of Teva stock. Schultz chose dramatic actions that would sooth the investment community and meet those goals. At Schultz's direction and with the approval of Teva's Board, Teva suspended dividends on its common stock, ordered that no annual bonus payments be made to employees for the year 2017 and announced a reduction in its employment force of 14,000 people, including 25% of the Teva US workforce. These actions were not really based on Teva's economic condition as evidenced by Schultz receiving a five-year contract, promises of tens of millions of dollars salary and benefits depending on his ability to raise the stock price, Twenty Million Dollar (\$20,000,000) cash sign-on payment and entitlement to a performance-based target incentive bonus of 140% of his annual base salary.

Compensation levels for the other executives that caused the problems for Teva that led to the decision to affect the reductions in the workforce also did not abate. Teva's senior management continued to receive inflated salaries and bonuses in the millions of dollars. All of that spending was affected while the median annual pay of Teva's employees was \$64,081.

As part of these circumstances and the ordered and largely ill-planned reduction in force quickly put into place to impress the investment community, Plaintiff, a sterling performer and valued high level management throughout his employment by Teva was chosen as one of the many victims of the apparent greed of the company leaders, in an effort by Teva to plan for the future by terminating older employees in keeping with age-based bias of its North American Human Resources head. More specifically, Tal Zorman who made the decision to terminate Plaintiff and replace him with a substantially younger individual was influenced by (1) the goal set by her immediate Superior who spearheaded the reduction in force effort, Mark Sabag, of "planning for the future" ( a goal calculated to insert younger individual in management positions) and (2) the opinion of Daniel Lawler who had demonstrated age-related animus against older employees prior to the reduction in force that cost plaintiff his livelihood.

As part of the reduction in force, on January 2, 2018, Plaintiff was advised that his employment would be terminated without any opportunity to accept a demotion to resume his position that would be retained. He was replaced by a lower-level direct report of his who had substantially less experience and less ability and was twenty-seven (27) years younger (date of birth: 7/22/1980).

In summary, and simply stated, age was the determinative factor in the decision to promote Mr. Nasi and fire Plaintiff.

### **SUMMARY STATEMENT OF DAMAGES**

Based on the above, Plaintiff suffered and will continue to suffer losses. While employed by Teva, Plaintiff earned a salary of \$286,000 with cash and equity bonus targets of 30% and 40% respectively, and healthcare benefits valued at \$2,196.54 per month. Plaintiff will testify at trial that he intended to work until at least past age 70 to the time he would be bonus and vesting eligible and that if

his health continued after that date, he would work until his 75<sup>th</sup> birthday. Accordingly, based on retirement at age 70, his losses are \$5,371,180.00 and \$15,285,425.00, sums that can be doubled if the jury finds the actions were a willful violation of the ADEA. *See* Plaintiff Exhibit No. 115 attached hereto.

Plaintiff has been unable to find replacement employment and has been serving as a consultant through his wholly owned company, The Total Rewards Consulting Group, LLC. His total earnings since the time of the termination of his employment have been \$137,985.00.

### **LIST OF WITNESSES**

#### **Liability**

Plaintiff, Randolph W. Keuch  
 Eduardo Nasi  
 Tal Zorman  
 Mark Sabag (To be presented by videotaped trial deposition)  
 Daniel Lawler  
 Elaine McGee

#### **Damages**

Plaintiff, Randolph W. Keuch  
 Tal Zorman  
 Elaine McGee

### **SCHEDULE OF PLAINTIFF'S TRIAL EXHIBITS**

<b>Exhibit #</b>	<b>Description</b>
1	Amended Complaint
2	Defendant TEVA Pharmaceuticals USA, Ins. Answer to Plaintiff's Amended Complaint
3	Defendant TEVA Pharmaceuticals Industries, LTD Answer to Plaintiff's Amended Complaint
4	Notice of Right to Sue
5	Plaintiff's Answers to Defendant's First Set of Interrogatories



6	Plaintiff's Counterstatement of material Facts in Support of His response in opposition to Defendant's Motion for Summary Judgment
7	Defendant's Response to Plaintiff's Counterstatement of Material Facts in Further Support of Defendant's Motion for Summary Judgement
8	Plaintiff's Response to Defendants' Statement of Material Facts in Support of its Response to defendant's Motion for Summary Judgment on all Counts of Plaintiff's Complaint
9	Deposition of Eduardo Nasi
10	Deposition of Randolph W. Keuch
11	Deposition of Daniel Lawler
12	Deposition of Tal Zorman
13	Deposition of Elaine McGee
14	Deposition of Mark Sabag
15	Keuch Employment Application
16	TUSA Employee Proprietary Information and Inventions Agreement
17	American Compensation Association Lifetime Achievement Award
18	August 23, 2017 Congratulatory Letter from TEVA CPA re: IRS Adjustment Finding
19	Keuch Bonus Payout Memo 2017
20	Sworn Affidavit of Plaintiff Randolph W. Keuch
21	Americas Total Rewards Team Operational Review – June 2017 (1)
22	Letter from Keuch to Employee re: Qualified Retirement Treatment for Unvested Equity Award Taxation
23	August 2017 Email Chain re: Retirement Vesting rule
24	March 2017 Email Chain re: Equity Treatment at Qualifying Retirement-Update
25	September 2016 \$23,800 Award to R. Keuch from Mark Sabag
26	March 2017 Email Chain re: Equity Treatment on Retirement
27	Email Chain, March 26, 2016 re: 409A Considerations
28	Stock Plans Management re: Equity Incentive Awards upon Retirement
29	November-December 2016 Email Chain re: 409A Retirement Eligibility

30	TEVA Qualifying Retirement Rules for Equality Treatment
31	8/6/2015 Base Salary Increase and Retention Bonus Memo
32	R. Keuch Job Offer Letter
33	Keuch Performance Documents 2015
34	Keuch 2016 Mid - Year Review
35	Keuch 2017 Performance Review
36	Keuch 2017 Mid – Year Review
37	Keuch Retention Bonus
38	Keuch Salary Increase
39	TEVA Pharmaceuticals USA, Inc. Supplemental Unemployment Benefit Plan, February 12, 2018
40	TEVA Pharmaceuticals USA, Inc. Employment Transition Plan, February 12, 2018
41	Vitman Email
42	Eduardo Nasi Pay Increase
43	Eduardo Nasi Compensation and Benefits/ Total Rewards Management positions
44	Separation Agreement and General Release
45	Keuch Separation Notification and Benefits Summary with Departing Employee Checklist
46	Keuch Email with L. Billow
47	Americas Total Rewards Team Operational Review – June 2017 (2)
48	10/3/2017 Mark Sabag Email re: Retention Concerns
49	Topics for Ron
50	12/10/2017 Vitman Email re: Changes in Global Grades due to Restructuring
51	Email from Hoopes re: HR Action: Employee Mapping (Guidance) December 13, 2017
52	12/13/2017 Email re: Randy/Tal 1:1
53	Mark Sabag Update Email
54	Email from Earl Major re: Talent Selection cc: Ellen McMahon

55	12/15/2017 Email re: Randy
56	Keuch Email re: Minimal TR Organization for North America
57	Assaf Email
58	12/15/2017 Email re: Minimal TR Organization for North America
59	Vitman Email re: Role Changes due to Restructuring Dec 18 v3.pptx
60	Keuch Dec. 20, 2017 Email and Attachments
61	Assaf Email Dec 22, 2017
62	Lawlor Email re: Confidential – Process for HR Notifications in US and Canada
63	Mark Sabag Email re: Update on year – end compensation process
64	Zorman Email
65	Jan 2, 2018 Email re: fyi, just spoke with RK
66	1/2/2018 Email re: Randy/ Tal
67	Freedman Email re: Happy New Year
68	Zorman Email January 9, 2018
69	Warn Act Notification
70	Lawlor Email with attachment
71	Vitman Email January 14, 2018 re: Confidential PLS DO NOT FORWARD- any inputs? Talent mgt L3 Draft Org Announcement
72	Keuch Email re: Draft for the Talent COE announcement
73	Keuch Dec 20, 2017 Email Chain
74	Keuch Email Chain re: EY Career Network – Meeting Invitation for Randolph Keuch, HR Executive (Sponsor – Stuart Stone) – to be scheduled.
75	Yehezkel Email with Attachments re: HR New Organization Structure Full 22Jan2018.pptx
76	Lux Email chain re: Thank you from Jayne Lux [ Marketing]
77	Keuch Email Chain February 8, 2018
78	Vitman Email re: Salary Recommendation
79	Vitman Email re: Promotion in TR (sensitive)
80	Vitman Email chain re: Promotion in TR (sensitive) Feb 27, 2018



81	Zorman Email chain re: Fwd: relocation
82	Teva's move of N. American HQ from Montco to N.J. takes another step forward article
83	Dec 14, 201 Teva Pharmaceutical Industries Ltd Performance Conference Call
84	Americas Total Rewards Team Operational Review – June 2017 (3)
85	Total Rewards Separation Guidelines Dec 2017
86	Americas Total Rewards Team Operational Review – June, 2017 (4)
87	Teva Announcement Dec. 14, 2017
88	Teva PPT Dec. 14, 2017 Announcement
89	Dec 15, 2017 Proposed Headcount Reduction for the North American TR Team
90	Dec 2017 Jobs Changes due to Restructuring
91	Dec 2017 Job Changes During Restructuring
92	Phillips Email and attachment re: Upcoming America's HR Town Hall
93	Larry Rappoport Email and attachment re: Minimal TR Organization for North America
94	Proposed Headcount Reduction for the North American TR Team Dec 27, 2107
95	Dec 21, 2017 Keuch Email re: FYI, I will be in contacting Edu
96	Email re: Topics for Ron 10/26/2017
97	Global Talent CoE L3 structure and nominations Dec 20, 2017 (1)
98	Global Talent CoE L3 structure and nominations Dec 20, 2017 (2)
99	Global Talent CoE L3 structure and nominations Dec 29, 2017
100	Restructuring Org. & People Implications BOD, Feb 6, 2018
101	North America People Office
102	NA Human Resources Final L3 Org Structure Dan Lawlor Jan 4, 2018
103	L3 Structure – Org structure
104	Anat Markus SVP, Global HR Operations and Services Chart
105	Pay Letter Eduardo Nasi Performance year January 1 to December 31, 2017
106	Edu Nasi – 2017 Performance feedback

107	Memorandum Middlebrooks v. TEVA
108	TEVA Pharmaceutical Industries Ltd. Form 10-K
109	Form 10-Q
110	Former Teva Exec Nabs \$6.2M Bias Verdict After Firing
111	Memorandum McManus v. TEVA
112	AT A Glance Instructions To Receive Severance Payment Benefits
113	Teva's Code of Conduct
114	TEVA Human Resources Management Guidelines
115	TEVA Lost Pay Analysis - Calculations
116	Compensation Report Weinstein

### **STATEMENT OF PLAINTIFF'S OBJECTIONS TO DEFENDANTS' EXHIBITS**

Plaintiff objects to the following exhibits listed by the Defendants on the basis of authenticity: Defendants Exhibit 64 (A-I).

### **ESTIMATED DAYS FOR TRIAL**

Plaintiff estimates that the total estimated time to try this matter is 5-7 days.

Respectfully submitted,

**SPECTOR GADON ROSEN VINCI P.C.**

By: /s/ Alan Epstein

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*Counsel for Plaintiff*

Dated: October 21, 2022

## Lost Compensation for Randolph Keuch

2017 Compensation	3/18/2018 to 3/19/2018	3/18/2018 to 3/19/2018	3/18/2019 to 3/19/2019	5/17/2019 to 5/17/2019	5/17/2020 to 5/17/2020	5/17/2021 to 5/17/2021	5/17/2022 to 5/17/2022	5/17/2023 to 5/17/2023	5/17/2024 to 5/17/2024	5/17/2025 to 5/17/2025	5/17/2026 to 5/17/2026	5/17/2027 to 5/17/2027	5/17/2028 to 5/17/2028	5/17/2029 to 5/17/2029
Conservative Salary Increase %	0	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%	3%
Conservative Salary Increase \$	\$0.00	\$8,568	\$1,471	\$8,825	\$9,090	\$9,362	\$9,634	\$9,903	\$10,171	\$10,439	\$10,707	\$10,975	\$11,243	\$11,511
Salary	\$285,600.00	\$294,168	\$49,273	\$302,993	\$312,083	\$321,173	\$330,263	\$339,353	\$348,443	\$357,533	\$366,623	\$375,713	\$384,803	\$393,893
Bonus (30%)	\$85,680.00	\$88,250	\$2,464	\$90,898	\$93,625	\$96,352	\$99,079	\$101,806	\$104,533	\$107,260	\$109,987	\$112,714	\$115,441	\$118,168
Salary + Target Bonus + Target Equity	\$371,280.00	\$382,418	\$51,737	\$393,891	\$405,708	\$417,525	\$429,342	\$441,159	\$452,976	\$464,793	\$476,610	\$488,427	\$499,244	\$510,061
Medical & Rx (2)	\$492,826	\$501,840	\$18,161	\$510,969	\$519,983	\$528,997	\$538,011	\$547,025	\$556,039	\$565,053	\$574,067	\$583,081	\$592,095	\$601,109
Dental (3)	\$23,936	\$24,393	\$453	\$24,846	\$25,303	\$25,759	\$26,216	\$26,673	\$27,129	\$27,586	\$28,043	\$28,500	\$28,957	\$29,414
HSA Funding	\$4,801	\$4,801	\$800	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801	\$4,801
Health Incentives	\$800	\$800	\$133	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$800	\$800
Vision (3)	\$600	\$600	\$100	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600	\$600
25% gross-up for taxes on benefits	\$7,608	\$7,608	\$1,369	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608	\$7,608
SUBTOTAL	\$530,570	\$530,570	\$78,164	\$552,457	\$574,316	\$596,175	\$618,034	\$639,893	\$661,752	\$683,611	\$705,470	\$727,329	\$749,188	\$771,047
Retirement (4) (5)														
Maximum ESPP Contribution by Teva	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125	\$1,125
6% of (salary + bonus) - 275,000	\$16,500	\$16,500	\$2,750	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500	\$16,500
2% of (\$275,000 - \$128,400)	\$2,932	\$2,932	\$489	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932
3.75% of \$275,000	\$10,313	\$10,313	\$1,719	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313
Def Comp of 6% of ((salary + bonus) - 275,000)	\$6,445	\$6,445	\$1,074	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445	\$6,445
Total Retirement Funds + ESPP	\$37,315	\$37,315	\$6,082	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315	\$37,315
Aggregate Retirement Funds + ESPP	\$1,306	\$1,306	\$222	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306	\$1,306
Annual Earnings on Retirement Funds	\$7,000	\$7,000	\$700	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
Mr Keuch's Contributions (7)	\$22,500	\$22,500	\$3,750	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500
Max HSA Contribution of \$6,000 + \$1,000 catch-up	\$7,000	\$7,000	\$700	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000
6% of \$275,000 + \$6,000 catch-up	\$22,500	\$22,500	\$3,750	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500	\$22,500
2% of \$275,000 - \$128,400	\$2,932	\$2,932	\$489	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932	\$2,932
3.75% of \$275,000	\$10,313	\$10,313	\$1,719	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313	\$10,313
Def Comp of 30% salary + 25% bonus	\$110,313	\$110,313	\$20	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313	\$110,313
Mr Keuch's Retirement Fund Contributions	\$139,813	\$139,813	\$3,750	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813
Aggregate Retirement Funds	\$139,813	\$139,813	\$148,456	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813	\$139,813
Earnings on Retirement Funds (6)	\$4,893	\$4,893	\$1,732	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893	\$4,893
Aggregate Annual Earnings on Retirement Funds (8)	\$6,199	\$6,199	\$8,453	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199	\$6,199
Aggregate Retirement Funds + ESPP + Earnings	\$43,514	\$43,514	\$53,156	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514	\$43,514
TOTAL COMPENSATION	\$574,084	\$574,084	\$131,321	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084
AGGREGATE COMPENSATION LOST	\$574,084	\$574,084	\$705,405	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084	\$574,084
AGE	63 + 9 mos/	64 + 9 mos.	65	66	67	68	69	70	71	72	73	74	75	76
Annual Equity value increase	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%	7.0%
Historical Equity Mid-Values	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
	\$114,125.00	\$101,840.00	\$80,835.00	\$70,560.00	\$101,840.00	\$114,125.00	\$126,410.00	\$138,695.00	\$150,980.00	\$163,265.00	\$175,550.00	\$187,835.00	\$199,120.00	\$203,405.00

- (1) Annual Equity value increase  
(1a) Historical Equity Mid-Values
- (2) Annual medical cost increase  
(3) Other med benefits annual increase  
(4) Current retirement limits unchange  
(5) Assumes maximum retirement contributions, which was the practice of Mr Keuch  
(6) Annual Earnings on Retirement fund  
(7) Lost investment earnings on Mr Keuch's retirement contributions, as required to receive Teva match  
(8) Sum of earnings from both Teva and Mr Keuch's contributions

EXHIBIT

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